

ASSEMBLY BILL

No. 468

Introduced by Assembly Member Yee

February 16, 2005

An act to amend Section 7576 of the Government Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 468, as introduced, Yee. Interagency responsibilities over handicapped children: mental health assessments.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs.

Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. The law authorizes a local educational agency to refer a pupil suspected of needing mental health services to a community mental health service.

This bill would require the local educational agency to obtain a copy of the community mental health service's standard assessment plan and provide the parent with an opportunity to consent to the assessment plan in advance, and would make conforming changes, thereby imposing a state-mandated local program. The bill would require the appropriate community mental health service to seek additional written consent to provide followup mental health services.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7576 of the Government Code is
2 amended to read:
3 7576. (a) The State Department of Mental Health, or any
4 community mental health service, as defined in Section 5602 of
5 the Welfare and Institutions Code, designated by the State
6 Department of Mental Health, are responsible for the provision
7 of mental health services, as defined in regulations by the State
8 Department of Mental Health, developed in consultation with the
9 State Department of Education, if required in the individualized
10 education program of a pupil. A local educational agency is not
11 required to place a pupil in a more restrictive educational
12 environment in order for the pupil to receive the mental health
13 services specified in his or her individualized education program
14 if the mental health services can be appropriately provided in a
15 less restrictive setting. It is the intent of the Legislature that the
16 local educational agency and the community mental health
17 service vigorously attempt to develop a mutually satisfactory
18 placement that is acceptable to the parent and addresses the
19 educational and mental health treatment needs of the pupil in a
20 manner that is cost-effective for both public agencies, subject to
21 the requirements of state and federal special education law,
22 including the requirement that the placement be appropriate and
23 in the least restrictive environment. For purposes of this section,
24 “parent” is as defined in Section 56028 of the Education Code.
25 (b) A local educational agency, individualized education
26 program team, or parent may initiate a referral for assessment of
27 the social and emotional status of a pupil, pursuant to Section

56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) (A) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(B) *The local educational agency shall obtain a copy of the community mental health service's standard assessment plan and shall provide the parent with an opportunity to provide advance written consent to the standard assessment plan at the same time that he or she consents to the referral. If the community mental health service accepts the referral and agrees to provide the assessment, the advance written consent shall satisfy the requirements for parental consent pursuant to subdivision (c) of Section 56321 of the Education Code, unless the parent revokes his or her consent. If the parent signs a written consent to refer the child for an assessment of the child's emotional status, no other consent is needed from the parent to perform the assessment of the child's emotional status.*

(C) *After the assessment pursuant to subparagraph (B) is completed and a knowing decision can be made, based on that assessment, regarding the child's need for further mental health*

1 *services, the appropriate community mental health service shall*
2 *seek additional written consent to provide those followup mental*
3 *health services.*

4 (3) The pupil has emotional or behavioral characteristics that
5 are all of the following:

6 (A) Are observed by qualified educational staff in educational
7 and other settings, as appropriate.

8 (B) Impede the pupil from benefiting from educational
9 services.

10 (C) Are significant as indicated by their rate of occurrence and
11 intensity.

12 (D) Are associated with a condition that cannot be described
13 solely as a social maladjustment or a temporary adjustment
14 problem, and cannot be resolved with short-term counseling.

15 (4) As determined using educational assessments, the pupil's
16 functioning, including cognitive functioning, is at a level
17 sufficient to enable the pupil to benefit from mental health
18 services.

19 (5) The local educational agency, pursuant to Section 56331 of
20 the Education Code, has provided appropriate counseling and
21 guidance services, psychological services, parent counseling and
22 training, or social work services to the pupil pursuant to Section
23 56363 of the Education Code, or behavioral intervention as
24 specified in Section 56520 of the Education Code, as specified in
25 the individualized education program and the individualized
26 education program team has determined that the services do not
27 meet the educational needs of the pupil, or, in cases where these
28 services are clearly inadequate or inappropriate to meet the
29 educational needs of the pupil, the individualized education
30 program team has documented which of these services were
31 considered and why they were determined to be inadequate or
32 inappropriate.

33 (c) If referring a pupil to a community mental health service in
34 accordance with subdivision (b), the local educational agency or
35 the individualized education program team shall provide the
36 following documentation:

37 (1) Copies of the current individualized education program, all
38 current assessment reports completed by school personnel in all
39 areas of suspected disabilities pursuant to Article 2 (commencing
40 with Section 56320) of Chapter 4 of Part 30 of the Education

1 Code, and other relevant information, including reports
2 completed by other agencies.

3 (2) A copy of the parent's consent *for referral and, at the*
4 *parent's option, advance written consent to the community*
5 *mental health service's assessment plan*, obtained as provided in
6 paragraph (2) of subdivision (b).

7 (3) A summary of the emotional or behavioral characteristics
8 of the pupil, including documentation that the pupil meets the
9 criteria set forth in paragraphs (3) and (4) of subdivision (b).

10 (4) A description of the counseling, psychological, and
11 guidance services, and other interventions that have been
12 provided to the pupil, as provided in the individualized education
13 program of the pupil, including the initiation, duration, and
14 frequency of these services, or an explanation of the reasons a
15 service was considered for the pupil and determined to be
16 inadequate or inappropriate to meet his or her educational needs.

17 (d) Based on preliminary results of assessments performed
18 pursuant to Section 56320 of the Education Code, a local
19 educational agency may refer a pupil who has been determined to
20 be, or is suspected of being, an individual with exceptional needs,
21 and is suspected of needing mental health services, to a
22 community mental health service if a pupil meets the criteria in
23 paragraphs (1) and (2). Referral packages shall include all
24 documentation required in subdivision (e) and shall be provided
25 immediately to the community mental health service.

26 (1) The pupil meets the criteria in paragraphs (2) to (4),
27 inclusive, of subdivision (b).

28 (2) Counseling and guidance services, psychological services,
29 parent counseling and training, social work services, and
30 behavioral or other interventions as provided in the
31 individualized education program of the pupil are clearly
32 inadequate or inappropriate in meeting his or her educational
33 needs.

34 (e) If referring a pupil to a community mental health service in
35 accordance with subdivision (d), the local educational agency
36 shall provide the following documentation:

37 (1) Results of preliminary assessments to the extent they are
38 available and other relevant information including reports
39 completed by other agencies.

1 (2) A copy of the parent's consent obtained as provided in
2 paragraph (2) of subdivision (b).

3 (3) A summary of the emotional or behavioral characteristics
4 of the pupil, including documentation that the pupil meets the
5 criteria in paragraphs (3) and (4) of subdivision (b).

6 (4) Documentation that appropriate related educational and
7 designated instruction and services have been provided in
8 accordance with Sections 300.24 and 300.26 of Title 34 of the
9 Code of Federal Regulations.

10 (5) An explanation as to the reasons that counseling and
11 guidance services, psychological services, parent counseling and
12 training, social work services, and behavioral or other
13 interventions as provided in the individualized education
14 program of the pupil are clearly inadequate or inappropriate in
15 meeting his or her educational needs.

16 (f) The procedures set forth in this chapter are not designed for
17 use in responding to psychiatric emergencies or other situations
18 requiring immediate response. In these situations, a parent may
19 seek services from other public programs or private providers, as
20 appropriate. This subdivision does not change the identification
21 and referral responsibilities imposed on local educational
22 agencies under Article 1 (commencing with Section 56300) of
23 Chapter 4 of Part 30 of the Education Code.

24 (g) Referrals shall be made to the community mental health
25 service in the county in which the pupil lives. If the pupil has
26 been placed into residential care from another county, the
27 community mental health service receiving the referral shall
28 forward the referral immediately to the community mental health
29 service of the county of origin, which shall have fiscal and
30 programmatic responsibility for providing or arranging for
31 provision of necessary services. In no event shall the procedures
32 described in this subdivision delay or impede the referral and
33 assessment process.

34 (h) A county mental health agency does not have fiscal or
35 legal responsibility for any costs it incurs prior to the approval of
36 an individualized education program, except for costs associated
37 with conducting a mental health assessment.

38 SEC. 2. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O